LIBRARY
SUPREME COURT U S

114

No. [redacted]

Office-Supreme Court, U.S.
FILED
MAY 20 1968
JOHN F. DAVIS, CLERK

In The Supreme Court of The United States

October Term, 1968

DESERT OUTDOOR
ADVERTISING, INC.,

Appellant,

vs.

COUNTY OF SAN BERNARDINO, et al.,

Appellees

On Appeal From the Court of Appeal of the State of California, Fourth Appellate District, Division Two

JURISDICTIONAL STATEMENT

J. PERRY LANGFORD
DAVID K. KROLL
1401 U.S. National Bank Bldg.
San Diego, California 92101

Attorneys for Appellants.

SUBJECT INDEX

	Page
OPINION BELOW	2
JURISDICTION	2
STATUTES INVOLVED	3
QUESTIONS PRESENTED	3
STATEMENT OF THE CASE	4
A. HOW THE FEDERAL QUESTIONS HAVE BEEN PRESENTED	4
B. FACTUAL BACKGROUND	5
C. THE ISSUES ARE SUBSTANTIAL	7
APPENDIX "A" - Opinion of the Court of Appeal	11
APPENDIX "B" - Memorandum Opinion and Judgment After Trial by Court	23
APPENDIX "C" - Highway Beautification Act of 1965	31
APPENDIX "D" - San Bernardino County Zoning Ordinance No. 678, Section 15.10	43
APPENDIX "E" - California Stats. 1967 Ch. 1408	61

TABLE OF AUTHORITIES CITED

Page

CASES

Armstrong v. U.S., 364 U.S. 40 (1959) . . . 8

Backus v. Fort Street Union Depot Co., 169 U.S. 557 (1897) 8

Chicago, Burlington etc. Ry. v. Chicago, 166 U.S. 226 (1897) 8

Home Insurance Co. v. Dick, 281 U.S. 397 (1929) 3

Murray v. Charleston, 96 U.S. 432 (1877) . 3

Richards v. Washington Terminal Co., 233 U.S. 546 (1914) 8

St. Louis Consol. Coal Co. v. Illinois, 185 U.S. 203 (1902) 3

U.S. v. General Motors Corp., 323 U.S. 373 (1944) 8

STATUTES

California Stats. 1967, ch. 1408 6

23 U.S.C. Section 131. . . . . 6, 9

28 U.S.C. Section 1257(2) 2, 7

TABLE OF AUTHORITIES CITED (Continued)

Page

OTHER AUTHORITIES

County of San Bernardino Zoning Ordinance
No. 678, Section 15.5h 5
Section 15.10b. 5
Section 15.10m 5
Section 19.3 5
Section 19.3b 5

42 Op. Atty. Gen. (November 16, 1966) 4, 9

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. _____

DESERT OUTDOOR ADVERTISING, INC.,

Appellant,

vs.

COUNTY OF SAN BERNARDINO, et al.,

Appellees.

On Appeal From the Court of Appeal of the State of California, Fourth Appellate District, Division Two

---

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Court of Appeal of the State of California, Fourth Appellate District, Division Two, entered on January 3, 1968, affirming the judgments below and upholding the validity of Zoning Ordinance No. 678 of the County of San Bernardino, California. This statement is submitted to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial federal questions are presented.

OPINION BELOW

The opinion of the Court of Appeal of California, Fourth Appellate District, Division Two, is reported in 225 A.C.A. 890 (1967). A copy of the opinion is attached hereto as Appendix A. Copies of the Judgments and Opinion of the trial court are attached hereto as Appendix B.

JURISDICTION

Judgments were entered in two consolidated actions. The first action by the County of San Bernardino and People of the State of California was to enforce Zoning Ordinance No. 678 by requiring the removal of two advertising signboards. The second action was by the owner of the signboards to restrain the enforcement of the ordinance as to two other signs on the grounds of its unconstitutionality and other defects.

The judgments of the Superior Court of California, County of San Bernardino, were entered on November 18, 1965; Notice of Appeal to the Court of Appeal of California, Fourth Appellate District, Division Two were filed on January 13, 1966; a single decision of the Court of Appeal was entered on November 7, 1967, and a Petition for Hearing to the Supreme Court of California was filed on December 18, 1967; said Petition was denied on January 3, 1968, and a Notice of Appeal to the Supreme Court of the United States was filed on March 29, 1968 in the Court of Appeal of California, Fourth Appellate District, Division Two.

The jurisdiction of the Supreme Court to hear this appeal rests upon 28 U.S.C. §1257(2).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

Murray v. Charleston, 96 U.S. 432, 441, 442 (1877)

St. Louis Consol. Coal Co. v. Illinois, 185 U.S. 203, 206 (1902)

Home Insurance Co. v. Dick, 281 U.S. 397, 407 (1929)

STATUTES INVOLVED

Section 131 of Title 23 U.S.C., the Highway Beautification Act, and pertinent sections of San Bernardino County Zoning Ordinance No. 678 are set forth in Appendix C and D respectively. Introductory sections of California Stats. 1967, ch. 1408 are set forth in Appendix E.

QUESTIONS PRESENTED

Where advertising signboards are lawfully in existence, can a county require their removal by a subsequently passed "zoning" ordinance without payment of any compensation.

Secondly, is such an ordinance repugnant to the Federal Highway Beautification Act, which act requires payment of compensation for such removal.

Lastly, can a "zoning" ordinance based primarily

or entirely on aesthetic grounds, require the removal of pre-existing sign structures.

STATEMENT OF THE CASE:

A. HOW THE FEDERAL QUESTIONS HAVE BEEN PRESENTED

The three federal questions were raised by appellant in his briefs on appeal. The issue of taking without compensation was raised at Appellant's Opening Brief, page 19, at Heading No. IV, where it was asserted that:

> "Ordinance 678, . . . is violative of the Constitutional guarantees of equal protection and due process. . . ; its application against appellant is little more than a form of eminent domain without payment."

In addition, appellant cited 42 Op. Atty. Gen., (Nov. 16, 1966) at page 6 of Appellant's Reply Brief, and quoted from it the Attorney General's opinion that

> ". . . section 131 is to be read as requiring each State to afford just compensation as a condition of avoiding the 10% reduction of subsection [131] (b)."

The applicability of the Federal Highway Beautification Act was directly raised in Appellant's Reply Brief at pages 5 and 6 and was cited at the "Table of Authorities" page at the beginning of the Reply Brief.

The issue of aesthetics was raised in Appellant's Opening Brief, page 11, paragraph 1, and specifically

recognized by the Appellate court as an issue on appeal at 255 A.C.A. 890 at 893, 894-895.

B. FACTUAL BACKGROUND

Appellant is a corporation which has as its primary business the ownership and leasing of advertising signboards in San Bernardino and other California Counties. In 1960, the County of San Bernardino enacted zoning ordinance No. 678, which ordinance became effective as of September 22, 1960. The ordinance states at Section 15.10b that:

> "Advertising structures shall not be erected, constructed, or maintained within 500 feet of any County or State freeway . . . . "

Exceptions are included for signs adjacent to business or industrial structures in specified zones, but none of the exceptions are applicable to Appellant. No provisions are included in the ordinance for payment of compensation to the owners of the signs or to anyone else. At Section 15.5h the ordinance provides that pre-existing use signboards may remain for a period of five years. Section 19.3b provides for penal consequences for violation, and Section 19.3 provides that advertising structures contrary to its terms may be abated as public nuisances.

Section 15.10m provides as follows:

> "This section is adopted by the Board of Supervisors because the Board finds that advertising structures impair the natural scenic beauty of this County, and constitute

> a hazard for drivers of vehicles traveling on the nearby freeways within the County."

On October 22, 1965, Congress revised Section 131 of Title 23, U.S.C , to enact the Federal Highway Beautification Act of 1965. The Act is a comprehensive plan for controlling the erection and maintenance of outdoor advertising signs in areas adjacent to the Interstate System of highways and State Primary highway systems. The Act provides at subsection (b) that Federal-aid highway funds shall be reduced by 10% to any State which has not made provision for effective control of said signs in accordance with the Act; at subsection (e) that any sign lawfully in existence along the Federal-aid primary system on September 1, 1965, which does not conform to the Act shall not be required to be removed until July 1, 1970; and at subsection (g) that just compensation shall be paid upon the removal of all signs which were lawfully in existence on the date of enactment of the Act, and that the Federal government shall pay 75% of such compensation for both the owner's interest in the signs and the landowner's property rights.

The State of California enacted statutes in 1967 to put the Federal Highway Beautification Act into effect. (California Stats. 1967, ch. 1408). Section One of Chapter 1408 provides that:

> "It is the intention of the Legislature, in enacting this act, to provide for the effective control of outdoor advertising required by the Highway Beautification Act of 1965, Section 131 of Title 23 of the United States Code, as in effect October 22, 1965. . . ."

The present case involves four signboards which

are located adjacent to Federal-aid primary highways in the County. All four signs were erected and in existence prior to the enactment of the ordinance. At the end of the five-year pre-existing use period, the County brought an action to have two of the signs removed as public nuisances. Appellant brought an action in the same court to restrain enforcement of the ordinance as to two other signs on the grounds of the ordinance's invalidity and unconstitutionality. Both actions were consolidated for trial.

Evidence offered by the county consisted of proof that the signs were in existence and being maintained after the five-year period had ended, and non-expert testimony concerning alleged adverse economic effect of the signboards on the general area. No evidence was offered that the signs constituted a hazard to motorists. Appellant's evidence consisted primarily of testimony that the signboards were not "nuisances" in the general non-statutory sense, and that maintenance of the signs was an economically advantageous and best use of the land. Judgment was entered for the County in both actions, and Appellant was ordered to remove the signs. The instant appeals have resulted.

C. THE ISSUES ARE SUBSTANTIAL

There can be little question but that the Supreme Court has jurisdiction of this case under Section 1257(2) of Title 28 U.S.C. The square issue before the court is the validity of the so-called "zoning" ordinance. The State court has decided in favor of validity and against the claimed Federal Constitutional and Federal statute rights. The sole issue before the trial court, the Appellate courts, and this court is the validity of the "zoning" ordinance.

It is obvious that a decision on the issues raised herein will have a vast and far-reaching effect throughout the entire United States. Thousands of signboard owners and landowners, as well as the general public, will be directly affected. Indeed, the scope of the issues is indicated by the fact that Congress has seen fit to pass such sweeping legislation in the field, and that the States are now busily concerned with zoning, highway construction and master plans for future growth. Yet there are no decisions by the Supreme Court or any Federal Appellate court to give guidance in this area. Can a State declare an established lawful business to be illegal in the name of scenic beauty and subject to destruction without compensation? Does the State police power require or justify an absolute loss of property rights with no payment?

This Court has consistently protected other types of property from being taken without compensation. In the landmark cases of Chicago, Burlington etc. Ry. v. Chicago, 166 U.S. 226 (1897) and Backus v. Fort Street Union Depot Co., 169 U.S. 557 (1897) the Court recognized that the 14th Amendment does apply to prohibit an uncompensated taking by a State. In the case of Richards v. Washington Terminal Co., 233 U.S. 546 (1914), the taking was recognized as unconstitutional despite the fact that the property was characterized as a "nuisance". Clearly, the property rights of the sign owners are to be protected, just as are other types of property rights. See, e.g., U.S. v. General Motors Corp., 323 U.S. 373 (1944) and Armstrong v. U.S., 364 U.S. 40 (1959). The fact that the taking is done in the name of "zoning" or "police power", cannot destroy the owner's right to compensation.

The opinion of the Attorney General of the United

States, at 42 Op. Atty. Gen. (Nov. 16, 1966) unequivocally states that the Federal Highway Beautification Act (Section 131, Title 23, U.S.C.) requires the states to pay compensation for the taking of signs lawfully in existence on September 1, 1965. Under the county ordinance, the five-year moratorium period for existing signs did not end until September 22, 1965. Thus, the decision in this case by the California courts is directly contrary to the Federal Act as construed by the Attorney General. The great importance of this issue has been recognized by the Secretary of Commerce in requesting the opinion, and by the Attorney General. None of these issues have been decided by the Supreme Court of the United States.

It is submitted that the decision of the Court of Appeal of California denies to Appellant his rights as guaranteed by the 14th Amendment to the Constitution of the United States, and creates a precedent with far-reaching legal implications. It should not be permitted to stand. The issues are substantial, the Court has jurisdiction, and the matters are of great public importance.

Respectfully submitted,

/s/ J. PERRY LANGFORD
DAVID K. KROLL
Counsel for Appellant
1401 U.S. National Bank Bldg.
San Diego, California 92101

APPENDIX "A"

OPINION OF THE COURT OF APPEAL

225 A. C. A. 890 (1967)

4th Civil No. 8350. Fourth Appellate District, Division Two. Filed November 7, 1967. George J. Kobelin, Clerk.

DESERT OUTDOOR ADVERTISING, Plaintiff and Appellant, vs. COUNTY OF SAN BERNARDINO, Defendant and Respondent.

4th Civil No. 8341, Fourth Appellate District, Division Two. Filed November 7, 1967. George J. Kobelin, Clerk.

COUNTY OF SAN BERNARDINO, Plaintiff and Respondent, vs. DESERT OUTDOOR ADVERTISING, Defendant and Appellant.

APPEAL from a judgment of the Superior Court of San Bernardino County. Henry M. Busch, Judge. Affirmed.

Daniel N. Fox for Appellant.

Stanford D. Herlick, County Counsel, and Paul A. Grube, Jr., Deputy County Counsel, for respondent.

This appeal involves two consolidated cases: No.

8340 - Desert Outdoor Advertising, Inc. versus the County of San Bernardino, and No. 8341 - County of San Bernardino versus Desert Outdoor Advertising, Inc. The legal problems involved are identical. For sake of convenience, Desert Outdoor Advertising, Inc., will be referred to as 'plaintiff,' and County of San Bernardino will be referred to as 'defendant' or 'County.' Case No. 8340 was an action by plaintiff against defendant to restrain it from enforcing the provisions of its zoning ordinance relating to two of the billboards along freeways listed below. Case No. 8341 was an action by the county against Desert Outdoor Advertising, Inc., to abate as nuisances the other two billboards involved herein, also along freeways, allegedly in contravention of the same ordinance. The respective locations and zones in which the signs are located are as follows:

	Location	Zone
1.	San Bernardino Freeway near Etiwanda Avenue	M-2 General Manufacturing District
2.	San Bernardino Freeway near Live Oak Avenue - Fontana Area	R-3 Multiple Family Residence District
3.	Redlands Freeway near Yucaipa-San Gorgonio Pass	M-1 Limited Manufacturing District
4.	Barstow Freeway near Cajon Summit	M-1 Limited Manufacturing District

The text of the portion of the ordinance involves is as follows:

"15.10 SIGNS ADJACENT TO FREEWAYS:

"a. . . .

"b. Advertising structures shall not be erected, constructed or maintained within 500 feet of any County or State freeway so that the advertising matter thereon shall be visible to the operators of vehicles being driven on said freeways while approaching such structures, except that his subsection shall not apply under the following conditions:

"(1) In Valley-moutain areas in *C-2 or M-1 zones if such structures* are on the same side of the freeway as, and within 500 feet of a business or industrial structure (other than an advertising structure) located in a C-2 or M-1 zone and within 150 feet of the freeway.

"(2) In desert areas and that portion of the valley-mountain area along the Barstow Freeway, Legislative Route 31 north of the Main Street Over-crossing (Devore), Bridge No. 54-525, in C-2 or M-1 zones if such structures are on the same side of the freeway as, and within 500 feet of a business or industrial structure (other than an advertising structure) located in a C-2 or M-1 zone and within 150 feet of the freeway.

> Provided further that a maximum of two advertising structures shall be permitted within an additional 500 feet of the exterior boundaries described above and as illustrated on the drawing designated Figure 1. Provided further that subject to approval of location and development as provided in Sec. 15.6, advertising structures shall be permitted on the opposite side of the freeway within an area directly opposite and bounded by the exterior boundaries described above and illustrated on the drawing designated Figure 1. Business or industrial structure as used herein shall mean an occupied permanent building attached to a permanent foundation where one or more persons are regularly employed. . . . "

The ordinance has customary provisions relating to penal consequences of its violation, and also provides that any structure contrary to its terms is unlawful, is a public nuisance, and may be abated by action in the superior court.

Plaintiff makes a number of contentions, of which we will discuss the following: (1) That neither zoning ordinances nor anti-billboard ordinances may be based on aesthetic considerations alone, and that any ordinance so based violates the due process and equal protection clauses of the Fourteenth Amendment to the U. S. Constitution and cognate provisions of the California Constitution; (2) that the case of National Advertising v.

Monterey, 211 Cal. App. 2d 375, does not support the validity of the questioned parts of this ordinance, but suggests invalidity as applied to plaintiff; (3) that the supervisors' stated purposes support plaintiff's position; (4) that the State of California by virtue of its Outdoor Advertising Act has preempted the field as to all aspects of outdoor advertising in unincorporated county areas; and (5) that the enactment is contrary to section 65852 of the Government Code requiring uniformity of regulations within zones.

Concerning the first point, plaintiff's contention that such an ordinance may not be based on aesthetic considerations alone, we are referred to the case of Varney & Green v. Williams, 155 Cal. 318. This case, decided in 1909, holds that an ordinance of the town of East San Jose, which absolutely prohibited all advertising signs within its corporate limits, could not be sustained on the ground of aesthetic considerations. The following quote gives the essence of the case (p. 320):

> "That the promotion of aesthetic or artistic consideration is a proper object of governmental care will probably not be disputed. But, so far as we are advised, it has never been held that these considerations alone will justify, as an exercise of the police power, a radical restriction of the right of an owner of property to use his property in an ordinary and beneficial way. Such restriction is, if not a taking, pro tanto, of the property, a damaging thereof, for which, under section 14 of article I of the constitution, the owner is entitled to compensation. To this extent the authorities are all in accord. 'No case has been

> cited,' says the court of errors and appeals of New Jersey in City of Passaic v. Paterson, etc. Co., 72 N. J. L. 285 (111 Am. St. Rep. 676, 62 Atl. 267), 'nor are we aware of any case which holds that a man may be deprived of his property because his tastes are not those of his neighbors. Aesthetic considerations are a matter of luxury and indulgence rather than of necessity, and it is necessity alone which justifies the exercise of the police power to take private property without compensation.'"

The holdings of recent cases in California are that, although the doctrine of Varney & Green v. Williams, supra, 155 Cal. 318, may still apply, if there is in addition some other justification such as economic advantage to the area an ordinance such as the one under consideration must be sustained. This may be summed up by the following quotation from the very recent case, County of Santa Barbara v. Purcell, Inc., 251 Cal. App. 2d ___ 1/:

> 'Defendants assert that these ordinances 'bottom solely upon aesthetics.' Their argument, based upon their interpretation of Varney & Green v. Williams (1909) 155 Cal. 318 [100 P. 867, 132 Am. St. Rep. 88, 21 L. R. A. N. S. 741], is that zoning laws may only be used to protect the economic interests of a property ower [sic] and not to preserve the priceless beauty of a countryside for all men. It is unnecessary to meet that argument directly, for the trial court

---

1/ 251 A. C. A. 173, 177

> has found that in Santa Barbara County scenic environment is commercial.' The trial court found that people come to the county because of its natural beauty, and that the maintenance of billboards along the highway may reasonably be believed to have an adverse effect upon the economy.
>
> "Defendants' arguments as to the constitutionality of these ordinances are answered by what has been said in National Advertising Co. v. County of Monterey, (1962) 211 Cal. App. 2d 375, [27 Cal. Rptr. 136]; Metromedia, Inc. v. City of Pasadena (1963) 216 Cal. App. 2d 270 [30 Cal. Rptr. 731]; and Burk v. Municipal Court (1964) 229 Cal. App. 2d 696 [40 Cal. Rptr. 425]."

In the case at bench, testimony was taken and several witnesses testified that the absence of billboards along freeways would constitute a beautification which, in turn, would tend to attract tourists, settlers and industries to the county, thus establishing economic benefit as an additional base to sustain the provisions of the zoning ordinance under question. The trial court made a finding as follows: "Said provision operates to help provide a favorable environment for private industries, in particular the tourist industry, by the regulation of land use." On the basis of the foregoing authorities, we must hold that the questioned portion of the ordinance is a proper exercise of the police power.

We will now turn to plaintiff's contention that the case of National Advertising v. Monterey, supra, 211 Cal. App. 2d 375, does not support the validity of the ordinance in question herein, and, in fact, suggests its

invalidity. It calls attention to the following language from that decision at page 382:

> "Our conclusion differs as to the 'U' districts. As we have pointed out, these districts are designed as holding areas, whose rural character is to be maintained only until some definite trend toward particular uses begins to develop. The ordinance recognizes that these areas have not reached a point of development warranting more specific regulation. . . . We have held that it is reasonable to prevent hindrance of such development by barring the mushrooming of easily installed off-site signs and by limiting a number of offensive uses through requiring use permits therefor. It is quite another thing, however, to require removal of such signs in areas whose ultimate use is not now determinable. Upholding that portion of the removal requirement could well result in destriction today of a sign which could be rebuilt in the near future.
>
> "When a particular 'U' district has developed sufficiently to warrant placing it in a specific district, it will be time enough to resort to the remedy of removal. . . ." (Emphasis added.)

The answer to this problem in the case at bench is that in the ordinance now under consideration we do not have involved a 'U' district but are concerned with M-2, R-3 and M-1 districts. It is true that the trial judge in the course of preliminary discussions seemed to be

under the impression that the M-1 district was a catch-all or holding zone. However, a reading of the ordinance indicates a large number of uses are assigned to that particular zone, and there is no language that indicates it is a holding zone. Thus, the case of National Advertising v. Monterey, supra, 211 Cal. App. 2d 375, supports the provision of the ordinance in question rather than suggesting its invalidity.

We now go to the question raised relating to the reasons stated by the supervisors for adopting the amendment in question. The amendment under attack contains the following stated reasons for the enactment:

> "This section is adopted by the Board of Supervisors because said Board finds that advertising structures impair the natural scenic beauty of this County, and constitutes a hazard for drivers of vehicles traveling on the nearby freeways within the County."

Plaintiff points out that the second of the two stated reasons, "auto safety," is one which is completely within the domain of the state, and the counties are forbidden to participate in the making of highway and safety regulations with few exceptions. It quotes 21 Opinions of the Attorney General at page 43:

> "By the Outdoor Advertising Act the legislature has reserved to the State itself the power to regulate advertising upon property adjacent to public highways in unincorporated areas from the standpoint of safety . . . ." (Emphasis added.)

In view of our holding on this aspect of the case, it

is not necessary to decide this question but will assume, arguendo, that "auto safety" is a field which the state has preempted. It does not follow that because one of the stated grounds is improper that the ordinance should fall. There is no law that requires supervisors in passing ordinances to make a statement of a reason or reasons. This is done frequently to assist in the event of need for interpretation in the future, and it has been held that courts may give weight to such legislative recitals.

We have already discussed whether aesthetic consideration alone constitutes a sufficient base for a zone regulation involving billboards. The fact that the supervisors did not include in the reasons related in the ordinance the additional reason of economic advantage to the county does not preclude this court from considering the same in order to uphold the enactment.

Turning to plaintiff's contention that the state has preempted the field of outdoor advertising by its Outdoor Advertising Act, the same is answered (if the provisions under attack are "zoning") by section 5227 (Bus. & Prof. Code) of that act, where it is clearly stated that nothing in the chapter prohibits passage by any county of reasonable land use or zoning regulations affecting the placing of advertising displays in accordance with the provisions of the planning law. This contention was also made in the case of County of Santa Barbara v. Purcell, supra, 251 Cal. App. 2d___ 2/, where it was held that counties still have the power to regulate billboards and outdoor advertising by zoning ordinances.

Next we will consider the points raised by plaintiff

2/ 251 A.C.A. 173, 177.

as to the effect of Government Code, section 65802 (now section 65852) requiring uniformity of regulations within zones under zoning ordinances. This bears on the vital question of whether the section under consideration is in fact a zoning provision which the county could enact, pursuant to section 5227, Business and Professions Code, or whether it is in reality an anti-billboard ordinance tacked onto a zoning ordinance and therefore within the field of legislation preempted by the state by the Outdoor Advertising Act.

Section 65852 (§65802 at the time of the enactment in question) of the Government Code in the chapter on zoning regulations reads as follows:

> "Uniformity of Zoning Regulations.
>
> "All such regulations shall be uniform for each class or kind of building or use of land throughout each zone, but the regulation in one type of zone may differ from those in other types of zones."

Ordinance section 15.10 is uniform in application wherever there are equal conditions within a zone in that only the presence or absence of a freeway affects the zoning requirement. Absolute uniformity of land use throughout a zone would be impossible. Varying situations within a zone necessarily must be considered. An example from the San Bernardino County ordinance might be the provision of section 4, subsection c, which allows livestock to be kept on parcels within the R-1 zone of five acres or more yet denying such use to smaller parcels. It could not be argued that this creates a lack of uniformity of regulation within the zone in the sense intended by section 65852, Government Code.

The cited example is typical of many similar provisions in all zoning ordinances and illustrates the impossibility of there being absolute uniformity throughout each zone as to the permitted uses of each and every square foot of land. We conclude that section 15.10 of the San Bernardino county ordinance is not in violation of section 65852, Government Code, and therefore is a proper zoning provision and within the powers of the board of supervisors to enact.

Affirmed.

s/ Thompson (Raymond)
J. Pro Tem*

We concur:

s/ McCabe
P. J.

s/ Kerrigan
J.

*Appointed by the Chairman of the Judicial Council.

APPENDIX "B"

FILED
1965 SEP 16 PM 3 28

V. DENNIS WARDLE
County Clerk
By Deputy Clerk
Francis L. Walski

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DESERT OUTDOOR ADVERTISING, INC., a Corporation, and SEYMORE BUSBOM,	)	
Plaintiffs,	)	No. 122 830
vs.	)	
COUNTY OF SAN BERNARDINO, STANFORD D. HERLICK, County Counsel, and the MUNICIPAL COURT, SAN BERNARDINO JUDICIAL DISTRICT,	)	MEMORANDUM OPINION
Defendants.	)	
COUNTY OF SAN BERNARDINO, et al.,	)	
	)	No. 116 416
vs.	)	
CHRIS WAUGH, et al.,	)	
Defendants.	)	

The above matters were consolidated for hearing, and after considering the evidence, and the briefs of counsel, the court issues its memorandum of opinion as follows:

(1) That the injunction prayed for in Action No. 122830 be denied.

(2) That the injunction prayed for in Action No. 116416 be granted.

County Counsel shall prepare Findings, Conclusions, and Judgment in each case.

Dated this 14th day of September, 1965.

/s/ Henry M. Busch
Henry M. Busch, Judge

STANFORD D. HERLICK
County Counsel
PAUL A. CRUSE, JR.
Deputy County Counsel
Court House
San Bernardino, California
TUrner 90111, Extension 520

Attorneys for Defendants

Entered NOV 19 1965
Book 190 Page 254
V. DENNIS WARDLE,
Clerk

/s/ Florence A. Coleman
Deputy

FILED

1965 NOV 15 PM 4 24

V. DENNIS WARDLE
County Clerk

BY DEPUTY
/s/ Francis L. Walski

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DESERT OUTDOOR ADVERTISING, INC., a Corporation, and SEYMORE BUXBOM, Plaintiffs, vs. COUNTY OF SAN BERNARDINO, STANFORD D. HERLICK, County Counsel, and the MUNICIPAL COURT, SAN BERNARDINO	NO. 122830 JUDGMENT AFTER TRIAL BY COURT

JUDICIAL DISTRICT,)
)
Defendants.)
)

The above entitled matter having come on regularly for trial on the 27th day of July, 1965, at 10:00 A. M, plaintiffs. and each of them, having appeared by their attorney, Conrad C. Caldwell, and defendants having appeared by their attorneys, Stanford D. Herlick by Paul A. Grube, Jr., and a jury trial having been duly waived, the court having heard the testimony and considered the evidence, and the court having already filed its Findings of Fact and Conclusions of Law on November , 1965,

IT IS ADJUDGED that the permanent injunction prayed for in plaintiffs' complaint hereof is denied and the preliminary injunction and temporary restraining order heretofore granted are hereby vacated, set aside and dissolved.

Dated this 18th day of November, 1965.

/s/ Henry M. Busch
Judge of the Superior Court

I certify this to be a true copy of the Judgment in the above case entered on _____, 1965, in the Minute Book, page _____.

V. DENNIS WARDLE, Clerk

By_____
Deputy

STANFORD D. HERLICK
County Counsel
PAUL A. GRUBE, JR.
Deputy County Counsel
Court House
San Bernardino, California
TUrner 90111, Extension 520

Attorneys for Plaintiff

FILED

1965 NOV 18 PM 4 31

V. DENNIS WARDLE
County Clerk

By Deputy Clerk

/s/ Francis L. Walski

Entered NOV 18 1965

Book 190 Page 238

V. DENNIS WARDLE, Clerk

By /s/ Florence A. Coleman
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

COUNTY OF SAN BERNARDINO, AND THE PEOPLE OF THE STATE OF CALIFORNIA,	)	No. 116416
Plaintiffs,	)	
vs.	)	JUDGMENT AFTER TRIAL BY COURT
CHRIS WAUGH, individually, and doing business as ADMIRAL	)	

ADVERTISING COMPANY, et al.,)
)
Defendants.)
)

The above entitled matter having come on regularly for trial on July 27, 1965, at 10:00 A. M., plaintiff having appeared by its attorney Stanford D. Herlick by Paul A. Grube, Jr., and defendant Desert Outdoor Advertising, Inc. having appeared by its attorney Conrad C. Caldwell, and a jury trial having been duly waived, the court having heard the testimony and considered the evidence, and the court having already filed its Findings and Conclusions of Law on November , 1965,

IT IS ADJUDGED that defendant Desert Outdoor Advertising, Inc., and its agents, employees, and all parties acting under said defendant, and each of them, is, and are, permanently enjoined and restrained from maintaining, conducting, permitting, operating, keeping and using any portion of the hereinafter described premises as a site for the location of a sign or advertising structure, and

It is adjudged that defendant Desert Outdoor Advertising, Inc., is ordered to cease and desist forthwith the maintaining, conducting, permitting, operating, keeping and using any portion of the hereinafter described premises as a site for the location of a sign or advertising structure, and defendant Desert Outdoor Advertising, Inc. is ordered to remove any signs on the hereinafter described premises within thirty (30) days.

IT IS FURTHER ADJUDGED that plaintiff County of San Bernardino recover from defendant Desert

Outdoor Advertising, Inc. costs as provided by law in the sum of $15.50.

Defendant Desert Outdoor Advertising, Inc., is enjoined and ordered as set forth in this judgment in regard to the following described premises only:

1. The premises on which is located that certain sign, which premises are adjacent to the San Bernardino Freeway, Legislative Route 26-D on a parcel of land described as SE 1/4 Sec. 20 T1S R6W as shown on that certain map marked "Exhibit #6" attached to plaintiffs' complaint hereof.

2. The premises on which is located that certain sign, which premises are adjacent to the San Bernardino Freeway, Legislative Route 26-D on a parcel of land described as the SW 1/4 Sec. 23 T1S R6W all as shown on that certain map marked "Exhibit #7" attached to plaintiffs' complaint hereof.

Dated: November 18, 1965.

/s/ Henry M. Busch
Judge of the Superior Court

APPENDIX "C"

"HIGHWAY BEAUTIFICATION ACT OF 1965

For Legislative History of Act, see p. 3710

PUBLIC LAW 89-285; STAT. 1028

[S. 2084]

An act to provide for scenic development and road beautification of the Federal-aid highway systems.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE 1

Sec. 101. Section 131 of title 28, United States Code, [2] is revised to read as follows:

'§ 131. Control of outdoor advertising

'(a) The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

'(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control

2. 23 U.S.C.A. §131.

of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the hearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such state under Section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

'(c) Effective control means that after January 1, 1968, such signs, displays, and devices shall, pursuant to this section, be limited to (1) directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning the lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, and (3) signs, displays, and devices advertising activities conducted on the property on which they are located.

'(d) In order to promote the reasonable, orderly, and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by

agreement between the several States and the Secretary, may be erected and maintained within six hundred and sixty feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act. Nothing in this subsection shall apply to signs, displays, and devices referred to in clauses (2) and (3) of subsection (c) of this section.

'(e) Any sign, display, or device lawfully in existence along the Interstate System or the Federal-aid primary system on September 1, 1965, which does not conform to this section shall not be required to be removed until July 1, 1970. Any other sign, display, or device lawfully erected which does not conform to this section shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

'(f) The Secretary shall, in consultation with the States, provide within the rights-of-way for areas at appropriate distances from interchanges on the Interstate System, on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. Such signs shall conform to national standards to be promulgated by the Secretary.

'(g) Just compensation shall be paid upon the removal of the following outdoor advertising signs, displays, and devices –

'(1) those lawfully in existence on the date of enactment of this subsection,

'(2) those lawfully on any highway made a part of the interstate or primary system on or after the date of enactment of this subsection and before January 1, 1968, and

'(3) those lawfully erected on or after January 1, 1968.

The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

'(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

'(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

'(h) All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

'(i) In order to provide information in the specific interest of the traveling public, the State highway departments are authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable.

'(j) Any State highway department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs,

displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State highway department shall be entitled to such payments unless the State maintains the control required under such agreement or the control required by this section, whichever control is stricter. Such payment shall be paid only from appropriations made to carry out this section. The provisions of this subsection shall not be construed to exempt any State from controlling outdoor advertising as otherwise provided in this section.

'(k) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section.

'(l) Not less than sixty days before making a final determination to withhold funds from a State under subsection (b) of this section, or to do so under subsection (b) of section 136, or with respect to failing to agree as to the size, lighting, and spacing of signs, displays, and devices or as to unzoned commercial or industrial areas in which signs, displays, and devices may be erected and maintained under subsection (d) of this section, or with respect to failure to approve under subsection (g) of section 136, the Secretary shall give written notice to the State of his proposed determination and a statement of the reasons therefor, and during such period shall give the State an opportunity for a hearing on such determination. Following such hearing the Secretary shall issue a written order setting forth his final determination and shall furnish a copy of such order to the State. Within forty-five days of receipt of such order, the State may appeal such order to any United States district court for such State, and upon the filing of such appeal such order shall be stayed until final judgment has been entered on

such appeal. Summons may be served at any place in the United States. The court shall have jurisdiction to affirm the determination of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the United States court of appeals for the circuit in which the State is located and to the Supreme Court of the United States upon certiorari or certification as provided in title 28, United States Code, section 1254. If any part of an apportionment to a State is withheld by the Secretary under subsection (b) of this section or subsection (b) of section 136, the amount so withheld shall not be reapportioned to the other States as long as a suit brought by such State under this this subsection is pending. Such amount shall remain available for apportionment in accordance with the final judgment and this subsection. Funds withheld from apportionment and subsequently apportioned or reapportioned under this section shall be available for expenditure for three full fiscal years after the date of such apportionment or reapportionment as the case may be.

'(m) There is authorized to be appropriated to carry out the provisions of this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1966, and not to exceed $20,000,000 for the fiscal year ending June 30, 1967. No part of the Highway Trust Fund shall be available to carry out this section.'

Sec. 102. The table of sections of chapter 1 of title 23 of the United States Code is amended by striking out

'131. Areas adjacent to the Interstate System.'

and inserting in lieu thereof

'131. Control of outdoor advertising.'

TITLE II

Sec. 201. Chapter 1 of title 23, United States Code, is amended to add at the end thereof the following new section:

'§136. Control of junkyards

'(a) The Congress hereby finds and declares that the establishment and use and maintenance of junkyards in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

'(b) Federal-aid highway funds apportioned on or January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the establishment and maintenance along the Interstate System and the primary system of outdoor junkyards, which are within one thousand feet of the hearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

'(c) Effective control means that by January 1, 1968, such junkyards shall be screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the system, or shall be removed from sight.

'(d) The term "junk" shall mean old or scrap

copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

'(e) The term "automobile graveyard" shall mean any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

'(f) The term "junkyard" shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

'(g) Notwithstanding any provision of this section, junkyards, auto graveyards, and scrap metal processing facilities may be operated within areas adjacent to the Interstate System and the primary system which are within one thousand feet of the nearest edge of the right-of-way and which are zoned industrial under authority of State law, or which are not zoned under authority of State law, but are used for industrial activities, as determined by the several States subject to approval by the Secretary.

'(h) Notwithstanding any provision of this section, any junkyard in existence on the date of enactment of this section which does not conform to the requirements of this section and which the Secretary finds as a practical matter cannot be screened, shall not be required to be removed until July 1, 1970.

'(i) The Federal share of landscaping and screening costs under this section shall be 75 per centum.

'(j) Just compensation shall be paid the owner for the relocation, removal, or disposal of the following

junkyards—

'(1) those lawfully in existence on the date of enactment of this subsection,

'(2) those lawfully along any highway made a part of the interstate or primary system on or after the enactment of this subsection and before Jaunary 1, 1968, and

'(3) those lawfully established on or after January 1, 1968.

The Federal share of such compensation shall be 75 per centum.

'(k) All public lands or reservations of the United States which are adjacent to any portion of the interstate and primary systems shall be effectively controlled in accordance with the provisions of this section.

'(l) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to outdoor junkyards on the Federal-aid highway systems than those established under this section.

'(m) There is authorized to be appropriated to carry out this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1966, and not to exceed $20,000,000 for the fiscal year ending June 30, 1967. No part of the Highway Trust Fund shall be available to carry out this section.'

Sec. 202. The table of sections of chapter 1, title 23, United States Code, is amended by adding at the end thereof the following:

'136. Control of junkyards.'

TITLE III

Sec. 301. (a) Section 319 of title 23, United States Code, is revised to read as follows:

'§ 319. Landscaping and scenic enhancement

'(a) The Secretary may approve as a part of the construction of Federal-aid highways the costs of landscape and roadside development, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities reasonably necessary to accommodate the traveling public.

'(b) An amount equivalent to 3 per centum of the funds apportioned to a State for Federal-aid highways for any fiscal year shall be allocated to that State out of funds appropriated under authority of this subsection, which shall be used for landscape and roadside development within the highway right-of-way and for acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to such highways, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to the highway right-of-way reasonably necessary to accommodate the traveling public, without being matched by the State. The Secretary may authorize exceptions from this requirement, upon application of a State and upon a showing that such amount is in excess of the needs of the State for these purposes. Any funds not used as required by this subsection shall lapse. There is authorized to be appropriated to carry out this subsection, out of any money in the Treasury not otherwise appropriated, not to exceed $120,000,000 for the fiscal year ending June 30, 1967. No part of the Highway Trust Fund shall be available to carry out this subsection.'

(b) The table of sections of chapter 3 of title 23 of the United States Code is amended by striking out

'319. Landscaping.'

and inserting in lieu thereof

'319. Landscaping and scenic enhancement.'

Sec. 302. In order to provide the basis for evaluating the continuing programs authorized by this Act, and to furnish the Congress with the information necessary for authorization of appropriations for fiscal years beginning after June 30, 1967, the Secretary, in cooperation with the State highway departments, shall make a detailed estimate of the cost of carrying out the provisions of this Act, and a comprehensive study of the economic impact of such programs on affected individuals and commercial and industrial enterprises, the effectiveness of such programs and the public and private benefits realized thereby, and alternate or improved methods of accomplishing the objectives of this Act. The Secretary shall submit such detailed estimate and a report concerning such comprehensive study to the Congress not later than January 10, 1967.

Sec. 303. (a) Before the promulgation of standards, criteria, and rules and regulations, necessary to carry out sections 131 and 136 of title 23 of the United States Code, the Secretary of Commerce shall hold public hearings in each State for the purpose of gathering all relevant information on which to base such standards, criteria, and rules and regulations.

(b) The Secretary of Commerce shall report to Congress, not later than January 10, 1967, all standards, criteria, and rules and regulations to be applied in carrying out sections 131 and 136 of title 23 of the United States Code.

Sec. 304. There is authorized to be appropriated the sum of $500,000 to enable the Secretary of Commerce to carry out his functions under section 135 of

title 23 of the United States Code relating to highway safety programs.

Sec. 305. Nothing in this act or the amendments made by this Act shall be construed to authorize the use of eminent domain to acquire any dwelling (including related buildings).

TITLE IV

Sec. 401. Nothing in this Act or the amendments made by this Act shall be construed to authorize private property to be taken or the reasonable and existing use restricted by such taking without just compensation as provided in this Act.

Sec. 402. In addition to any other amounts authorized by this Act and the amendments made by this Act, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Secretary of Commerce not to exceed $5,000,000 for administrative expenses in carrying out this Act (including amendments made by this Act).

Sec. 403. This Act may be cited as the 'Highway Beautification Act of 1965'.

Approved October 22, 1965."

APPENDIX "D"

Section 15.10

"15.10 SIGNS ADJACENT TO FREEWAYS:

a. The word 'Freeway' as used herein shall be defined as stated in Sec. 15.11a(3), except that when applied to 'Temporary off-site subdivision directional signs' and 'Temporary on-site subdivision signs', "Freeway' shall mean either a 'constructed freeway' or an 'unconstructed freeway route'

b. Advertising structures shall not be erected, constructed or maintained within 500 feet of any County of State freeway so that the advertising matter thereon shall be visible to the operators of vehicles being driven on said freeway while approaching such structures, except that this subsection shall not apply under the following conditions:

(1) In valley-mountain areas in C-2 or M-1 zones if such structures are on the same side of the freeway as, and within 500 feet of a business or industrial structure (other than an advertising structure) located in a C-2 or M-1 zone and within 150 feet of the freeway

(2) In desert areas and that portion of the valley-mountain area along the Barstow Freeway, Legislative Route 31 north of the Main Street Overcrossing (Devore), Bridge No 54-525, in C-2 or M-1 zones

if such structures are on the same side of the freeway as, and within 500 feet of a business or industrial structure (other than an advertising structure) located in a C-2 or M-1 zone and within 150 feet of the freeway Provided further that a maximum of two advertising structures shall be permitted within an additional 500 feet of the exterior boundaries described above and as illustrated on the drawing designated Figure 1. Provided further that subject to approval of location and development as provided in Sec. 15.6, advertising structures shall be permitted on the opposite side of the freeway within an area directly opposite and bounded by the exterior boundaries described above and illustrated on the drawing designated Figure 1.

Business or industrial structure as used herein shall mean an occupied permanent building attached to a permanent foundation wherein one or more persons are regularly employed.

Desert areas as used herein shall include that portion of San Bernardino County lying northerly of the San Bernardino National Forest and further described as follows:

Beginning at the intersection of the boundary line between San Bernardino and Los Angeles Counties and the north line of T3N R7W, SBB&M; thence east along the township line to the northeast corner of

Section 3, T3N R6W; thence southerly and easterly following the boundary line of the San Bernardino National Forest to an intersection with the boundary line between San Bernardino and Riverside Counties.

Valley-mountain area as used herein shall include all that portion of San Bernardino County not included in desert area.

c. The exception contained in sub-paragraph (b) above shall not operate within one mile of the limits of an incorporated city having regulations controlling advertising, such regulations being equal to, or more restrictive than, those of this Ordinance.

d. Directional signs, the area of which shall be computed in the same manner as stated in Section 15.11 a (10), may be located in M-2, M-1, M-R, or C-2 zones within 500 feet of a freeway when approved by the County Planning Commission for the following purposes: (Amended by Ord. 1218, adopted 3-15-65)

(1) A named place of business with road directions and distance but without other advertising, which business, in the opinion of the Planning Commission, is sufficiently isolated from a known and identified area to justify an individual sign to inform the public of its location. Such signs shall be limited to one sign for each direction of traffic movement, not exceeding 75 square feet in area if located less than 40 feet from the freeway property line, or 100

square if located 40 feet or more from the freeway property line, and shall be within one mile of the interchange turn-off road. Signs shall not be approved when State Highway directional signs identify the business at the turn-off road.

(2) Business, commercial, industrial and special service areas which provide services for the traveling public and which, in the opinion of the County Planning Commission, are not sufficiently identified by State Highway directional signs, may locate signs approved by the Planning Commission naming the type of area, road directions and distance, but without other advertising. Such signs shall be limited to one sign for each direction of traffic movement, not exceeding 75 square feet in area if located less than 40 feet from the freeway property line, or 100 square feet if located 40 feet or more from the freeway property line, and shall be within one mile of the interchange turn-off road. Such signs shall not be approved when State Highway directional signs identify the business area at the turn-off point.

(3) Applications for directional signs shall be filed with the County Planning Department on forms supplied by such office. A fee of $15.00 shall be paid to the County with the filing of each application.

e. The above provisions of this section shall not apply to any sign or signs without mechanical

or moving parts or automatically varying lights, and having a total area visible from any one freeway on a single parcel of property not in excess of the limits prescribed in subsection (f) below, if each such sign states or depicts nothing other than the following matters:

(1) The name of the building on the same property where the sign is located, if such name has been used for the previous year or the life of the building, whichever is less.

(2) The name of the person, firm or corporation occupying a building on the property where the sign is located and the type of business conducted by such person, firm or corporation.

(3) Only products manufactured or produced on the premises where the sign is located.

(4) Only services rendered on the premises where the sign is located.

(5) An offer to sell or lease some interest in the real property on which the sign stands.

(6) The name of the sign's owner or proprietor, provided such name is not a fictitious name which is substantially the same as the brand name of a product, and further provided that said sign is located on premises of the sign's owner or proprietor.

(7) Written matter not legible by the naked eye

from any point on the freeway. (Amended by Ord. 1218, adopted 3-15-65)

f. The signs authorized by subsection e shall not exceed sizes shown in the following schedule:

SETBACK FROM FREEWAY PROPERTY LINE	AREA OF SIGN
Up to 40 feet	100 square feet
40 feet to 99 feet	150 square feet
100 feet to 199 feet	200 square feet
200 feet to 299 feet	400 square feet
300 feet to 399 feet	600 square feet
400 feet and over	800 square feet

g. No sign shall be authorized by subsection e above, if the owner or occupant of the premises on which it is located is paid any consideration other than for the furnishing of the labor or materials used in constructing, erecting or maintaining the sign in exchange for the privilege of erecting, maintaining or using any portion of said sign.

h. The foregoing regulations shall not apply to the location of temporary off-site subdivision directional signs and temporary on-site subdivision signs. When such signs are located adjacent to a constructed freeway, they shall be governed by the following regulations:

(1) Temporary off-site subdivision directional signs, with name of development, road directions and distances, but without other advertising, shall be permitted adjacent to a

constructed freeway, subject to a valid occupancy permit. One sign shall be permitted for each direction of traffic movement and shall not exceed seventy-five (75) square feet in area if located less than forty (40) feet from the freeway property line, or one hundred (100) square feet in area if located forty (40) feet or more from the freeway property line. Such signs shall be at least three hundred (300) feet from any other sign, unless it is determined by the Director that a closer spacing will better accomplish the purposes of this Ordinance.

(2) Temporary signs advertising the sale or lease of lots or structures in legal subdivisions developed in accordance with County Subdivision Ordinance shall be permitted adjacent to a constructed freeway, subject to a valid occupancy permit and the setback regulations of this Ordinance. Such signs must be located within the boundaries of the subdivision being advertised or such adjacent subdivisions that are a part of or a continuation of the same development. (Amended by Ord. 1218, adopted 3-15-65)

(a) Prior to the erection of such signs, an application for occupancy permit and $10.00 fee shall be filed with the County Planning Department. After receipt of such application, the County Planning Director shall issue a valid occupancy permit, provided that after investigation, he determines as follows:

That highway access to the subdivision is so limited that it is apparent the majority of the traffic destined for the subdivision will be using the freeway in the area where the sign is to be located.

That the location of the sign will not create a traffic hazard, nor be incompatible with adjacent land uses.

Such occupancy permit shall authorize the construction and maintenance of the allowed number of temporary signs for a period not to exceed twelve (12) months from the date of approval of the occupancy permit. A cash bond in the amount of $100.00 to guarantee the removal of the signs at the end of the approved period shall be required and in the event the signs are not removed as required, the cash bond shall be declared forfeit and shall be deposited in the General Fund of the County of San Bernardino. In the event a surety bond is posted in lieu of a cash bond, the amount of the surety bond shall be $500.00.

The occupancy permit shall be subject to such conditions as the County Planning Director may require, which will assure that at its expiration, the signs will be removed and the premises restored to a condition in compliance with the provisions of the land use

district in which they are located.

(b) Extensions of time for a maximum of twelve (12) more months may be granted by the County Planning Commission provided the following conditions are met:

Application for extension and a $25.00 fee must be filed with the County Planning Department prior to the expiration of the occupancy permit.

The applicant must show that circumstances beyond his control have caused unusual delays.

The County Planning Commission shall determine that the continued use of the signs will not constitute a nuisance or be objectionable to the land uses in the neighborhood.

i. When such signs are located adjacent to an unconstructed freeway route, they shall be governed by the following regulations:

(1) Temporary off-site subdivision directional signs, with name of development, road directions and distance, but without other advertising. Such signs shall be permitted adjacent to an unconstructed freeway route, subject to a valid occupancy permit. One sign shall be permitted for each direction of traffic movement and shall not exceed seventy-five (75) square feet in area if

located less than forty (40) feet from the freeway property line, or one hundred (100) square feet in area if located forty (40) feet or more from the freeway property line. Such signs shall be at least three hundred (300) feet from any other sign, unless it is determined by the Director that a closer spacing will better accomplish the purposes of this Ordinance.

(2) Temporary signs advertising the sale or lease of lots or structures in legal subdivisions developed in accordance with County Subdivision Ordinance. Such signs shall be permitted adjacent to an unconstructed freeway route, subject to a valid occupancy permit and the setback regulations of this Ordinance. Such signs must be located within the boundaries of the subdivision being advertised or such adjacent subdivisions that are a part of or a continuation of the same development. (Amended by Ord. 1218, ad. 3-15-65)

(a) Prior to the erection of such signs, an application for occupancy permit and $10.00 fee shall be filed with the County Planning Department. After receipt of such application, the County Planning Director shall issue a valid occupancy permit provided that, after investigation, he determines as follows:

That the highway access to the subdivision is so limited that it is apparent the majority of the traffic destined for

the subdivision will be using the freeway in the area where the sign is to be located.

That the location of the sign will not create a traffic hazard, nor be incompatible with adjacent land uses.

Such occupancy permit shall authorize the construction and maintenance of the allowed number of temporary signs for a period of twelve (12) months from the date of approval of the occupancy permit or such additional period as the County Planning Director may designate. A cash bond in the amount of $100.00 to guarantee the removal of the signs at the end of the approved period shall be required and in the event the signs are not removed as required, the cash bond shall be declared forfeit and shall be deposited in the General Fund of the County of San Bernardino. In the event a surety bond is posted in lieu of a cash bond, the amount of the surety bond shall be $500.00.

The occupancy permit shall be subject to such conditions as the County Planning Director may require, which will be removed and the premises restored to a condition in compliance with the provisions of the land use district in which they are located.

j. Right of Appeal: Any decision of the County Planning Director involving an application for temporary subdivision sign occupancy permit as set forth above may be appealed therefrom to the County Planning Commission by any person aggrieved. The taking of an appeal stays proceedings in the matter appealed from until the determination of the appeal. The appeal shall be filed in writing and in duplicate in the office of the County Planning Department upon forms there provided. Any such appeal must set forth specifically wherein there was error or abuse of discretion. Any appeal from the decision of the County Planning Director approving or denying an application for temporary subdivision sign occupancy permit must set forth the particulars wherein the application did meet or did fail to meet, as the case may be, the sign requirements of this Ordinance as being requisite to the approval of any temporary subdivision sign occupancy permit.

An appeal shall be filed within ten (10) days after the rendition in writing of the decision appealed from, or it shall be dismissed by the County Planning Commission. Upon receipt of the appeal application, the County Planning Commission shall set the time, date and place wherein to consider the matter and shall give notice of same to the appellant and to any other party at interest who has requested in writing to be so notified. Upon hearing the appeal, the County Planning Commission shall consider the record and such additional evidence as may be offered and may affirm, reverse, or modify in whole or in part the decision appealed from, or

may make and substitute such other or additional decision or determination as it may find warranted under theprovisions of this Ordinance. The County Planning Commission shall forthwith transmit a copy of the decision to the appellant.

k. All existing temporary off-site subdivision directional signs and temporary on-site subdivision signs located adjacent to an unconstructed freeway route shall be removed within one year after the construction of the freeway, unless a lesser time limit has been applied by the occupancy permit.

l. Any advertising structures which become nonconforming shall be removed within three years from the date they become non-conforming.

m. This section is adopted by the Board of Supervisors because said Board finds that advertising structures impair the natural scenic beauty of this County and constitute a hazard for drivers of vehicles traveling on nearby freeways within the County. This section shall apply to such structures in addition to other regulations applicable thereto, and regardless of the district or zone in which the structure is located, but no such other regulation, whether contained in this Ordinance or elsewhere, shall be construed as permitting any exception to, or variance from the provisions of this section."

Section 19. INTERPRETATION, LEGAL PROCEDURE & PENALTY:

19.1 INTERPRETATION: In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of the public health, safety, comfort, convenience and general welfare. It is not intended by this Ordinance to interfere with or abrogate or annul any easement, covenant or other agreement between parties. Where this Ordinance imposes a greater restriction upon the use of building or land, or upon the height of buildings, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations or by easements, covenants or agreements, the provisions of this Ordinance shall control.

19.2 PERMITS - LICENSES: All departments, officials or public employees vested with the duty or authority to issue permits or licenses where required by law, shall conform to the provisions of this Ordinance. Licenses or permits for uses, buildings or purposes where the same would be in conflict with the provisions of this Ordinance shall not be issued. Any such license or permit, if issued in conflict with the provisions hereof, shall be null and void.

Premises shall not be occupied or used and buildings hereafter erected or altered shall not be occupied or used until a certificate of compliance shall have been issued by the secretary of the County Planning Commission. Such certification of compliance shall be required only when no building permit or business license or other evidence of authority shall have been required and issued,

as provided in this Section.

19.3 PENALTIES: Any building or structure erected or maintained, or any use of property contrary to the provisions of this Ordinance shall be and the same is hereby declared to be unlawful and a public nuisance and the District Attorney shall, upon order of the County Planning Commission or the County Building Official, immediately commence an action or actions, proceeding or proceedings for the abatement, removal and enjoinment thereof, in the manner provided by law; and shall take such other steps, and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such building, structure or use and restrain and enjoin any person from erecting or maintaining such building or structure or using any property contrary to the provisions of this Ordinance. It shall be the right and duty of every citizen to participate and assist the County Officials in the enforcement of the provisions of this Ordinance.

a. All remedies provided for herein shall be cumulative and not exclusive. The conviction and punishment of any person hereunder shall not relieve such person from the responsibility of correcting prohibited conditions or removing prohibited buildings, structures or improvements, nor prevent the enforced correction or removal thereof.

b. Any person, firm or corporation, whether as principal, agent, employee or otherwise, violating or causing or permitting the violation of any of the provisions of this Ordinance, or

of any permit or exception granted hereunder, shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable for each such offense by a fine of not more than $1,000.00 or less than $500.00 or by imprisonment in the County Jail for a term not to exceed six (6) months or by both such fine and imprisonment. No suspension of sentence or probation shall be granted to any such violator unless there is included in the terms thereof that the violator shall comply with the provisions which he has been convicted of violating and shall abate or correct the illegal conditions, if any, which have been brought about by the erection, construction, alteration, enlargement, conversion, movement or maintenance of any building established, constructed, operated or maintained contrary to the provisions of this Ordinance.

c. Each such person, firm or corporation shall be deemed guilty of a separate offense upon each day during any part of which any violation of any of the provisions of this Ordinance is committed, continued, permitted or maintained by such person, firm or corporation and shall be punishable therefor as herein provided.

d. In the event that any person, firm or corporation shall fail, neglect or refuse to demolish, remove, abate or correct a structure or condition existing in violation of this Ordinance, upon his or its property after a civil court order or criminal conviction obtained pursuant to this Section, the Board of Supervisors may order the Planning Director or Building Official to demolish, remove, abate or correct the

offending structure or condition. A statement of the cost of such work shall be transmitted to the Board of Supervisors who shall cause the same to be paid and levied as a special assessment against the property."

Sec. 15.5

h. Any non-conforming commercial signs and billboards existing at the time this Ordinance became effective may be continued, although such use does not conform with the provisions hereof; provided, however, that all such non-conforming signs and billboards and their supporting members shall be completely removed by their owners not later than five (5) years from the effective date of this Ordinance."

APPENDIX "E"

California Stats. 1967 ch. 1408

"§ 1. It is the intention of the Legislature, in enacting this act, to provide for the effective control of outdoor advertising required by the Highway Beautification Act of 1965, Section 131 of Title 23 of the United States Code, as in effect October 22, 1965, and particularly subdivisions (c) and (j) thereof. It is the intention of the Legislature to require that those segments of highways located in this state which are hereinafter referred to as penalty segments and bonus segments conform to the controls required by the said Highway Beautification Act of 1965 and that the bonus segments conform in addition to the controls required by the Federal-Aid Highway Act of 1958, Section 131 of Title 23 of the United States Code, as in effect before October 22, 1965, and the Collier-Z'berg Act, Chapter 128, Statutes 1964 (1st Ex Sess.), and by the Agreement for Carrying Out the National Policy Relative to Advertising Adjacent to the National System of Interestate and Defense Highways heretofore entered into pursuant to the said two acts between the United States of America, represented by the Secretary of Commerce, acting through the Federal Highway Administrator and the State of California, acting through the Director of Public Works, to the extent that the said latter controls are "stricter", within the meaning of the Highway Beautification Act of 1965, subdivision (j) of Section 131 of Title 23 of the United States Code, as in effect October 22, 1965.

§ 30. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of the act which can be given effect without the

invalid provision or application, and to this end the provisions of this act are severable.

§ 31. This act shall be known as the Collier-Z'berg Act of 1967. "

SU

No. [redacted]

PREME COURT, U. S.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. [redacted] 114

RECEIVED
JUN 18 1968
OFFICE OF THE CLERK
SUPREME COURT, U.S.

DESERT OUTDOOR ADVERTISING, INC.,
Appellant,

vs.

COUNTY OF SAN BERNARDINO, et al.,
Appellees.

On Appeal From the Court of Appeal of the State of California, Fourth Appellate District, Division Two

MOTION TO DISMISS

STANFORD D. HERLICK
County Counsel of the County of San Bernardino
By PAUL A. GRUBE, Jr. and WILLIAM SABOURIN
Deputy County Counsels of the County of San Bernardino
Of Counsel
Attorneys for Appellees

Inland Printing & Engraving Co., 430 Court St., San Bernardino, California 92402 TU 9-9666

TOPICAL INDEX

	Page
Motion to Dismiss	1
Questions Presented	2
Statement of the Case	2
Argument	4
Conclusion	10
Appendix "A"	11

TABLE OF CASES AND AUTHORITIES CITED

Cases

	Page
Cusack Co. v. Chicago, 242 U. S. 526 (1917)	4
Hadacheck v. Sebastian, Chief of Police of the City of Los Angeles, 239 U.S. 394 (1915)	4
Marblehead Land Co. v. City of Los Angeles, 47 Fed. Rep. 2d 528 (1931)	4
New Orleans v. Levy, 223 La. 14, 64 So. 2d 798 (1953)	9
New York State Throughway A v. Ashley Motor Court, 10 N.Y. 2d 151, 218 N.Y.S. 2d 640 (1961)	4
St. Louis Poster Co. v. City of St. Louis, 249 U.S. 269 (1919)	4
Village of Euclid et al, v. Amber Realty Co., 272 U.S. 365, 47 S. Ct. 114	4
Welch v. Swazey, 214 U.S. 91, 29 S. Ct. 567 (1909)	9

STATUTES and MISCELLANEOUS

Page

San Bernardino County Ordinance No. 678, Section 1510 ..... 1, 2

Collier-Z'berg Act of 1967 ..... 1, 4, 6

California Statutes of 1967 1

California Business and Professions Code, Division Chapter 2, §§ 5200-5325, §§ 5227, 5268, 5268.6, 5294 ..... 3, 6

Highway Beautification Act of 1965 ..... 2, 4

Highway Beautification Act of 1965, Section 131 ..... 5, 6

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 1451

DESERT OUTDOOR ADVERTISING, INC.,
Appellant,

vs.

COUNTY OF SAN BERNARDINO, et al.,
Appellees.

On Appeal From the Court of Appeal of the State of California, Fourth Appellate District, Division Two

MOTION TO DISMISS

THE STATUTES INVOLVED are set forth in appellant's jurisdictional statement and so are not repeated herein. The Appendices to that jurisdictional statement do not include all of San Bernardino County Ordinance No. 678, of which Section 15.10 is only a part, or all of the Collier-Z'berg Act of 1967, California Statutes 1967, Chapter 1408. The latter, partly amending California Business and Professions Code, DIVISION 3, Chapter 2 §§ 5200-5325, is more fully set forth in Appendix "A" infra.

QUESTIONS PRESENTED

Appellee County of San Bernardino moves to dismiss on the grounds that the questions presented are so unsubstantial as not to need further argument, under Rule 16.

The questions presented are:

1. May a local zoning ordinance require the removal of prior, legal-when-installed, billboards, when their respective periods of non-conforming use allowed by the ordinance have expired, without payment of compensation?

2. Does the federal Highway Beautification Act of 1965 preempt the operation of an ordinance such as described in No. 1 supra?

3. May a provision of a local zoning ordinance be valid if such provision is based partly on "aesthetic" considerations?

STATEMENT OF THE CASE

The appellant is the owner of four billboards located in different places in County of San Bernardino, California, but all located within 500 feet of a freeway. Appellee proceeded with court actions to enforce the provisions of Section 15.10 of San Bernardino County Ordinance No. 678, the zoning ordinance of this County, under the terms of which said four signs became prohibited. The provisions of that section do not present an outright proscription of all billboards along freeways, but permit such in certain zones where other commercial uses are established on adjacent land, near a freeway; however, none of such exceptions are applicable to the four signs in issue.

Incidentally, Section 15.10 paragraph 1 reads:

> "Any advertising structures which become non-conforming shall be removed within three years from the date they become non-conforming."

This paragraph means, of course, that the terms of the section could not initially become operative with regard to any billboard which had been legally installed, but that, after the effective date of the section, plus three years, all billboards under the terms of the section would then become proscribed. This section was enacted in 1958, originally as Section 15.9. It is well recognized that a zoning law may not be enacted which immediately prohibits an otherwise lawful use of land; a certain period must be allowed for continued use, a non-conforming use period. However, at no time has appellant raised an issue as to whether he was deprived of a non-conforming use right, or whether the non-conforming use right in this instance was unreasonable. Instead appellant has, at every stage, attacked this section head on, and has always asserted that Section 15.10 could not be enforced because such a regulation was not permitted to a county in this case, because of state and federal law.

Judgment in the Superior Court of the State of California for the County of San Bernardino was for the appellee, and an injunction issued, ordering appellant to discontinue use of the billboards and to remove the same. This judgment was sustained by the Court of Appeal. A petition for hearing to the Supreme Court of the State of California was denied.

ARGUMENT

I.

AS AN EXERCISE OF THE POLICE POWER, A ZONING REGULATION IS NOT AN EXERCISE OF THE POWER OF EMINENT DOMAIN, AND A LAND USE, INCLUDING BILLBOARDS, MAY BE PROHIBITED OR REQUIRED TO BE TERMINATED THEREUNDER; THEREFORE, A PROPOSITION THAT DAMAGES MUST BE PAID DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

That an otherwise lawful business may be prohibited in a certain area, under a police power measure, was iterated with regard to a brick making plant in a residential district in *Hadacheck v. Sebastian, Chief of Police of the City of Los Angeles*, 239 U.S. 394 (1915), and with regard to drilling for oil in a residential district in *Marblehead Land Co. v. City of Los Angeles*, 47 Fed. Rep. 2d 528 (1931).

Zoning, or control of land use, was fundamentally established against federal objections in *Village of Euclid et al., v. Amber Realty Company*, 272 U.S. 365, 47 S. Ct. 114.

Billboards are also subject to the power to regulate the location of land uses by a local governmental entity, *Cusack Co. v. Chicago*, 242 U.S. 526 (1917); *St. Louis Poster Co. v. City of St. Louis*, 249 U.S. 269 (1919); *New York State Throughway A v. Ashley Motor Court*, 10 N.Y. 2d 151, 218 N.Y.S. 2d 640 (1961).

II.

THE FEDERAL HIGHWAY BEAUTIFICATION ACT OF 1965 IS INAPPLICABLE HERE.

NO PROVISION OF THAT ACT PREEMPTS LOCAL ZONING LAW. THE FEDERAL ACT IS IMPLEMENTED BY THE STATE COLLIER-Z'BERG ACT, WHICH ALSO DOES NOT PREEMPT ZONING LAW.

The Federal Act, supra, provides for *state enactments* for implementation.

Section 131 (b) of that Act reads as follows:

> "Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such state under Section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periords as he deems necessary, the application of this subsection to a State."

Section 131 (d) of that Act reads in part as follows:

> "(d) . . . . The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of

the States in this regard will be accepted for the purposes of this Act. . . ."

Section 131 (k) of that Act reads as follows:

"(k) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section."

The Collier-Z'berg Act of 1967, California Statutes 1967, Chapter 1408, partly amended the California Business and Professions Code DIVISION 3 Chapter 2 §§ 5200-5325.

The following sections from that code show that these provisions do not preempt local zoning laws:

"§ 5227. It is the intention of the Legislature to occupy the whole field of regulation by the provisions of this chapter except that nothing in this chapter prohibits enforcement of any or all of its provisions by persons designated so to act by appropriate ordinances duly adopted by any county of this State nor does anything prohibit the passage by any county of reasonable land use or zoning regulations affecting the placing of advertising displays in accordance with the provisions of the Planning Law, Chapter 1 (commencing with Section 65000) of Title 7 of the Government Code, relating to zoning, or with reference to signs or structures pertaining to the business conducted or services rendered or goods produced or sold upon the property upon which such advertis-

ing signs or structures are placed, ordinances subjecting such signs or structures to building requirements."

"§ 5268. The issuance of a permit for the placing of an advertising structure includes the right to change the advertising copy thereon without obtaining any additional permit for the remainder of the calendar year in which the permit is issued and without the payment of any additional permit fee.

The issuance of a permit does not affect the obligation of the owner of the advertising display to comply with a zoning ordinance applicable to the advertising display under the provisions of this chapter nor does the permit prevent the enforcement of the applicable ordinance by the county."

"§ 5288.6. The provisions of this chapter shall not be construed to permit a person to place or maintain in existence on or adjacent to any street, road or highway, including any interstate or state highway, any outdoor advertising prohibited by law or by any ordinance of any city, county or city and county."

"§ 5294. Nothing in this chapter shall prohibit any county from designating the districts or zones in which advertising displays may be placed or prohibited as part of a county land use or zoning ordinance."

III.

THE INCLUSION OF AESTHETIC CONSIDERATIONS IN THE JUSTIFICATION OF A ZONING

PROVISION DOES NOT OFFER A QUESTION OF FEDERAL LAW BUT OF STATE ZONING LAW. THAT SUCH CONSIDERATIONS CAN BE ADDED TO OTHER REASONS FOR THE ZONING LAW IS BEYOND QUESTION.

The Opinion below reads in part as follows:

> "In the case at bench, testimony was taken and several witnesses testified that the absence of billboards along freeways would constitute a beautification which, in turn, would tend to attract tourists, settlers and industries to the county, thus establishing economic benefit as an additional base to sustain the provisions of the zoning ordinance under question. The trial court made a finding as follows: 'Said provision operates to help provide a favorable environment for private industries, in particular the tourist industry, by the regulation of land use.' On the basis of the foregoing authorities, we must hold that the questioned portion of the ordinance is a proper exercise of the police power."

Aesthetic considerations, together with fire protection considerations, were employed in upholding a law providing restrictions on the height of buildings in *Welch v. Swazey*, 214 U.S. 91, 29 S. Ct. 567 (1909).

An ordinance regulating the use of signs on buildings in an historical section of New Orleans was upheld on aesthetic reasons, coupled with the economic consideration of the tourist industry's need for attractiveness, *New Orleans v. Levy*, 223 La. 14, 64 So. 2d 798 (1953).

CONCLUSION

Appellant's appeal to the United States Supreme Court should be dismissed.

Respectfully submitted,

STANFORD D. HERLICK,
County Counsel of the County of San Bernardino,

By.....
PAUL A. GRUBE, JR.,
Deputy County Counsel of the County of San Bernardino,
Attorneys for Appellees.

WILLIAM SABOURIN,
Deputy County Counsel
of the County of San Bernardino,
Of Counsel.

APPENDIX "A"

1967 Regular Session

ADVERTISING—HIGHWAY BEAUTIFICATION

CHAPTER 1408

SENATE BILL NO. 636

An act to add Sections 5207.1, 5207.2, 5207.3, 5207.4, 5207.5, 5207.6, 5207.7, 5207.8, 5207.9, 5213, 5214, 5214.1, 5288.1a, 5288.1b, 5288.2a, 5288.3a, 5288.3b, 5288.3c, 5288.5a, 5288.5b, 5288.5c, 5288.7, and 5311.5 to, and to amend Sections 5206, 5226, 5239, 5286, 5288, 5288.1, 5288.2, 5288.4, and 5288.5 of, the Business and Professions Code, relating to outdoor advertising.

The people of the State of California do enact as follows:

SECTION 1. It is the intention of the Legislature, in enacting this act, to provide for the effective control of outdoor advertising required by the Highway Beautification Act of 1965, Section 131 of Title 23 of the United States Code, as in effect October 22, 1965, and particularly subdivisions (c) and (j) thereof. It is the intention of the Legislature to require that those segments of highways located in this state which are hereinafter referred to as penalty segments and bonus segments conform to the controls required by the said Highway Beautification Act of 1965 and that the bonus segments conform in addition to the controls required by the Federal-Aid Highway Act of 1958, Section 131 of Title 23 of the United States Code, as in effect before October 22, 1965, and the Collier-Z'berg Act, Chapter 128, Statutes 1964 (1st Ex. Sess.), and

by the Agreement for Carrying Out the National Policy Relative to Advertising Adjacent to the National System of Interstate and Defense Highways heretofore entered into pursuant to the said two acts between the United States of America, represented by the Secretary of Commerce, acting through the Federal Highway Administrator and the State of California, acting through the Director of Public Works, to the extent that the said latter controls are "stricter", within the meaning of the Highway Beautification Act of 1965, subdivision (j) of Section 131 of Title 23 of the United States Code, as in effect October 22, 1965.

SEC. 2. Section 5206 of the Business and Professions Code is amended to read:

5206.

The verb, to place and any of its variants, as applied to advertising displays, includes the maintaining and the erection, constructing, posting, painting, printing, tacking, nailing, gluing, sticking, carving or otherwise fastening, affixing or making visible any advertising display on or to the ground or any tree, bush rock, fence, post, wall, building, structure or thing. It does not include any of the foregoing activities when performed incident to the change of an advertising message or customary maintenance of the advertising display.

SEC. 3. Section 5207.1 is added to the Business and Professions Code, to read:

5207.1.

"Interstate highway" means any highway at any time officially designated as a part of the national system of interstate and defense highways by the

director and approved by appropriate authority of the federal government.

SEC. 4. Section 5207.2 is added to the Business and Professions Code, to read:
5207.2

"Primary highway" means any highway, other than an interstate highway, at any time officially designated as a part of the federal-aid primary system by the director and approved by appropriate authority of the federal government.

SEC. 5. Section 5207.3 is added to the Business and Professions Code, to read:
5207.3.

"The Highway Beautification Act of 1965" refers to Section 131 of Title 23 of the United States Code, as in effect October 22, 1965.

SEC. 6. Section 5207.4 is added to the Business and Professions Code, to read:
5207.4.

"The Federal Aid Highway Act of 1958" refers to Section 131 of Title 23 of the United States Code, as in effect before October 22, 1965.

SEC. 7. Section 5207.5 is added to the Business and Professions Code, to read:
5207.5.

"The Collier-Z'berg Act" refers to Chapter 128, Statutes 1964, (First Extraordinary Session).

SEC. 8. Section 5207.6 is added to the Business and

Professions Code, to read:

5207.6

"Bonus segment" means any segment of an interstate highway which was covered by the Federal Aid Highway Act of 1958 and the Collier-Z'berg Act, namely, any such segment which is constructed upon right-of-way, the entire width of which was acquired subsequent to July 1, 1956.

SEC. 9. Section 5207.7 is added to the Business and Professions Code, to read:

5207.7.

"Penalty segment" means any segment of a highway located in this state which was not covered by the Federal Aid Highway Act of 1958 and the Collier-Z'berg Act but which is covered by the Highway Beautification Act of 1965, namely, any segment of an interstate highway which is constructed upon right-of-way, any part of the width of which was acquired prior to July 1,1956, and any segment of a primary highway.

SEC. 10. Section 5207.8 is added to the Business and Professions Code, to read:

5207.8.

"Centerline of the highway" means a line equidistant from the edges of the median separating the main-traveled way of a divided highway, or the centerline of the main-traveled way of a nondivided highway.

SEC. 11. Section 5207.9 is added to the Business and Professions Code, to read:

5207.9.

"660 feet from the edge of the right-of-way" means 660 feet measured from the edge of the right-of-way horizontally along a line normal or perpendicular to the centerline of the highway.

SEC. 12. Section 5213 is added to the Business and Professions Code, to read:

5213.

"Unzoned commercial or industrial area" means an area not zoned under authority of state law in which the land use is characteristic of that generally permitted only in areas which are actually zoned commercial or industrial under authority of state law, embracing all of the land on which one or more commercial or industrial activities are conducted, including all land within 1,000 feet, measured in each direction, from the nearest edge of the commercial or industrial building or activity on such land. As used in this section, "commercial or industrial activities" does not include the outdoor advertising business or the business of wayside fresh-product vending.

SEC. 13. Section 5214 is added to the Business and Professions Code, to read:

5214.

"Business area" means an area within 1,000 feet, measured in each direction, from the nearest edge of a commercial or industrial building or activity and which is zoned under authority of state law primarily to permit industrial or commercial activities or an unzoned commercial or industrial area.

SEC. 13.1 Section 5214.1 is added to the Business and Professions Code, to read:

5214.1.

For the purpose of this chapter only, the word "freeway" means a divided arterial highway for through traffic with full control of access and with grade separations at intersections.

SEC. 14. Section 5226 of the Business and Professions Code is amended to read:

5226.

The provisions of this chapter apply only to the placing of advertising displays within view of * * * highways * * * located in unincorporated areas of this state, except that the placing of advertising displays within 600 feet from the edge of the right-of-way of, and the copy of which is visible from, interstate highways or primary highways, including the portions of such highways located in incorporated areas, shall be governed by this chapter.

SEC. 14.1. Section 5239 of the Business and Professions Code is amended to read:

5239.

A person engages in the business of outdoor advertising whenever he personally or through employees places advertising displays containing advertising which does not pertain exclusively to his own business, or changes the advertising message of such advertising displays.

SEC. 14.2 Section 5286 of the Business and Profes-

sions Code is amended to read:

5286.

No advertising display shall be placed or maintained in any of the following locations or positions or under any of the following conditions or if the advertising structure or sign is of the following nature:

(a) If within the right-of-way of any highway.

(b) If visible from any highway and simulating or imitating any directional, warning, danger or information sign permitted under the provisions of this chapter, or if likely to be mistaken for any such permitted sign, or if intended or likely to be construed as giving warning to traffic, such as by the use of the words "stop" or "slow down."

(c) If within any stream or drainage channel or below the flood water level of any stream or drainage channel where the advertising display might be deluged by flood waters and swept under any highway structure crossing the stream or drainage channel or against the supports of the highway structure.

(d) If not maintained in safe condition.

(e) If visible from any highway and displaying any red or blinking or intermittent light likely to be mistaken for a warning or danger signal.

(f) If visible from any * * * highway which is a part of the * * * interstate * * * or primary systems, and displaying any flashing, intermittent or moving light or lights, or which is placed upon trees, or painted or drawn upon rocks or other natural features, except that any such display visible from a

highway which is a part of the interstate system (and which highway is constructed upon right-of-way the entire width of which was acquired subsequent to July 1, 1956) and lawfully maintained in existence on July 1, 1964, may be maintained in existence until July 1, 1969. Any such display visible from any highway which is part of the interstate system (and which highway is constructed upon the right-of-way any part of which was acquired on or before July 1, 1956) or any highway which is a part of the primary system and which is lawfully maintained in existence on the effective date of the amendment of this subdivision at the 1967 session of the Legislature may be maintained in existence until July 1, 1970.

(g) If any illumination thereon shall be of such brilliance and so positioned as to blind or dazzle the vision of travelers on adjacent highways. * * *

SEC. 15. Section 5288 of the Business and Professions Code is amended to read:

5288.

(a) The regulation of advertising * * * displays adjacent to any * * * interstate highway * * * or primary highway as herein provided is hereby declared to be necessary to promote the public safety, health, welfare, convenience and enjoyment of public travel, to protect public investment in such highways, to preserve the scenic beauty of lands bordering on such highways, and to insure that information in the specific interest of the traveling public is presented safely and effectively, recognizing that a reasonable

freedom to advertise is necessary to attain such objectives. The Legislature finds:

(1) Outdoor advertising is a legitimate commercial use of property adjacent to roads and highways.

(2) Outdoor advertising is an integral part of the business and marketing function, and an established segment of the national economy, and should be allowed to exist in business areas, subject to reasonable controls in the public interest.

(b) Notwithstanding any other provisions of this chapter, no advertising display shall be placed or maintained within 660 feet from the edge of the right-of-way of, and the copy of which is visible from, any interstate or primary highway * * * other than the following:

(1) Directional or other official signs or notices that are required or authorized by law, including, but not limited to, signs pertaining to natural wonders, scenic and historical attractions, and which comply with regulations which shall be promulgated by the director relative to their lighting, size, number, spacing and such other requirements as may be appropriate to implement this chapter, which regulations shall not be inconsistent with such national standards as may be promulgated from time to time by the Secretary of Transportation of the United States pursuant to subdivision (c) of Section 131 of Title 23 of the United States Code.

(2) Advertising displays * * * advertising the

sale or lease of the property upon which they are located, provided all such advertising displays within 660 feet of the edge of the right-of-way of a bonus segment shall comply with the regulations prescribed pursuant to Section 5288.4.

(4) Advertising displays erected or maintained pursuant to regulations of the director, and not inconsistent with the national policy set forth in subdivision (f) of Section 131 of Title 23 of the United States Code and the standards promulgated thereunder by the Secretary of * * * Transportation, and designed to give information in the specific interest of the traveling public. * * *

SEC. 16. Section 5288.1 of the Business and Professions Code is amended to read:

5288.1.

The provisions of Section 5288 shall not apply to * * * bonus segments * * * which traverse and abut on commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to and abutting on the national system of interstate and defense highways is subject to municipal regulation or control, or which traverse and abut on other business areas where the land use, as of September 21, 1959, was clearly established by state laws as industrial or commercial, provided that advertising displays within 660 feet of the edge of the right-of-way of such bonus segments shall be subject to the provisions of Section 5288.1b.

SEC. 17. Section 5288.1a is added to the Business and Professions Code, to read:

5288.1a.

The provisions of Section 5288 shall not apply to penalty segments which are located, or which are to be located, in business areas and which comply with Section 5288.1b, except that Section 5288 shall apply to unzoned commercial or industrial areas in which the commercial or industrial activity ceases and is removed or permanently converted to other than a commercial or industrial activity, and displays in such areas shall be removed not later than five years following the cessation, removal, or conversion of the commercial or industrial activity.

SEC. 18. Section 5288.1b is added to the Business and Professions Code, to read:

5288.1b.

Advertising displays in business areas shall comply with the provisions of this chapter, except the provisions of Section 5288, and shall comply with the following standards:

(a) Advertising displays shall not be placed which exceed 1,200 square feet in area with a maximum height of 25 feet and a maximum length of 60 feet, including border and trim, and excluding base or apron supports and other structural members. This subdivision shall apply to each facing of an advertising display. The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof, which will encompass the entire advertisement. Two advertising displays not exceeding 350 square feet each may be erected in a facing. Any advertising display lawfully in existence on August 1, 1967, which

exceeds 1,200 square feet in area, and which is permitted by city or county ordinance, may be maintained in existence.

(b) Advertising displays shall not be placed which are so illuminated that they interfere with the effectiveness of, obscure any official traffic sign, device, or signal; nor shall any advertising display include or be illuminated by flashing, intermittent or moving lights (except that part necessary to give public service information such as time, date, temperature, weather, or similar information); nor shall any advertising display cause beams or rays of light to be directed at the traveled ways if such light is of such intensity or brilliance as to cause glare or to impair the vision of any driver, or to interfere with any drivers' operation of a motor vehicle.

(c) Advertising displays shall not be placed in such a manner as to obstruct, or otherwise physically interfere with, an official traffic sign, signal, or device or to obstruct, or physically interfere with, the vision of drivers in approaching, merging, or intersecting traffic.

(d) No advertising display shall be placed within 500 feet from another advertising display on the same side of any portion of an interstate highway or a primary highway which is a freeway. No advertising display shall be placed within 500 feet of an interchange, or an intersection at grade, or a safety roadside rest area on any portion of an interstate highway or a primary highway which is a freeway and if the interstate or primary highway is located outside the limits of an incorporated city. No advertising display shall be placed within 300 feet from another advertis-

ing display on the same side of any portion of a primary highway which is not a freeway if that portion of the primary highway is located outside the limits of an incorporated city. No advertising display shall be placed within 100 feet from another advertising display on the same side of any portion of a primary highway which is not a freeway if that portion of the primary highway is located inside the limits of an incorporated city. But this subdivision shall not apply to advertising displays which are separated by a building or other obstruction in such a manner that only one display located within the minimum spacing distances set forth herein is visible from the highway at any one time. This subdivision shall not prevent the erection of double-faced, back-to-back, or V-type advertising display, with a maximum of two signs per facing, as permitted in subdivision (a). This subdivision shall not apply to advertising displays permitted by subdivision (b) of Section 5288. The minimum distance between signs shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway. Any advertising display lawfully in existence on August 1, 1967, which does not conform to the provisions of this subdivision but which is permitted by city or county ordinances may be maintained in existence.

SEC. 19. Section 5288.2 of the Business and Professions Code is amended to read:

5288.2.

Any advertising display located within 660 feet of the edge of the right-of-way of, and the copy of which is visible from, any * * * bonus segment, and which

advertising display was lawfully maintained in existence on July 1, 1964, but which is not within one of the classes specified in subdivision (b) of Section 5288 * * * or exempted by Section 5288.1, may be maintained in existence until July 1, 1969, unless required to be removed prior thereto by order of the director; provided that this section shall not apply to advertising displays adjacent to a landscaped freeway.

SEC. 20. Section 5288.2a is added to the Business and Professions Code, to read:

5288.2a.

Any advertising display located within 660 feet of the edge of the right-of-way of, and the copy of which is visible from, any penalty segment, or any bonus segment described in Section 5288.1 which display was lawfully maintained in existence on the effective date of this section but which was not on that date in conformity with the provisions of this article, may be maintained, and shall not be required to be removed until July 1, 1970. Any other sign is lawful when erected, but which does not on January 1, 1968, or any time thereafter, conform to the provisions of this article, may be maintained, and shall not be required to be removed, until the end of the fifth year after it becomes nonconforming; provided that this section shall not apply to advertising displays adjacent to a landscaped freeway.

SEC. 21. Section 5288.3a is added to the Business and Professions Code, to read:

5288.3a.

Each removal ordered by the director, on or after

the effective date of this section, of any of the following advertising displays which is not as of that date in conformity with the provisions of this article shall be deemed a removal under Section 5288.2a and shall be deemed to constitute a taking, within the meaning of the Highway Beautification Act of 1965, subdivision (g) of Section 131 of Title 23 of the United States Code, as in effect October 22, 1965, of all right, title, and interest, including any leasehold interest, of the owner of the advertising display and of the right of the owner of the real property on which the advertising display is located to erect and maintain such advertising display thereon:

(a) Advertising displays lawfully in existence on October 22, 1965.

(b) Advertising displays on real property adjoining a highway made an interstate highway or a primary highway between October 21, 1965, and January 1, 1968, which were lawfully in existence on the date the highway was so classified.

(c) Signs lawfully in existence on, or lawfully erected on or after, January 1, 1968.

If federal law requires the states to pay just compensation with regard to the removal, on or after July 1, 1970, or the end of the fifth year after an advertising display becomes nonconforming, as the case may be, of such advertising displays, owners of such advertising displays which are removed pursuant to this article or owners of the land upon which such displays are located, or both, whichever way the federal law is interpreted, shall be paid just compensation. The sole intent of the Legislature in enacting this paragraph is

to comply with federal law, and it is otherwise not the intent of the Legislature to in any manner relinquish any of its powers relating to the removal of advertising displays under the police power.

SEC. 22. Section 4288.3b is added to the Business and Professions Code, to read:

5288.3b.

The compensation required by Section 5288.3a shall be paid to the person or persons entitled thereto upon filling of a written claim with the director containing such information as the director may reasonably require. The claim for compensation must be filed within 180 days after removal is completed.

SEC. 23. Section 5288.3c is added to the Business and Professions Code, to read:

5288.3c.

If the director and a person who has presented a claim under Section 5288.3b do not reach agreement as to whether compensation is payable under Section 5288.3a or as to the amount of such compensation within 120 days after the filing of such a claim, the claimant may institute an action at law to have his right to such compensation determined. Such an action shall be instituted by the filing of the complaint in the superior court for the county in which the advertising display and the real property are located. The complaint shall be filed not later than one year after the filing with the director of the claim for compensation. Such an action shall be treated in accordance with Title 7 (commencing with Sec. 1237) of Part 3 of the Code of Civil Procedure.

SEC. 24. Section 5388.4 of the Business and Professions Code is amended to read:

5288.4.

Regulations heretofore promulgated by the director concerning interstate highways constructed upon rights-of-way, the entire width of which was acquired after July 1, 1956, shall be continued in effect to the extent necessary to comply with the agreement with the Secretary of Commerce specified in Section 131(j) of Title 23 of the United States Code. The director shall prescribe and enforce regulations for the erection and maintenance of advertising * * * displays permitted by Sections 5288 and 5288.1b consistent with * * * Section * * * 131 of Title 23 of the United States Code and the national standards promulgated thereunder by the Secretary of * * * Transportation; provided, that the director shall not prescribe regulations imposing stricter requirements for the size, spacing or lighting of advertising displays than are prescribed by Section 5288.1b of this chapter and provided that the director shall not prescribe regulations to conform to changes in federal law or regulations made after the effective date of the amendment of this section at the 1967 Regular Session of the Legislature without prior legislative approval.

Notwithstanding any other provisions of this chapter, no outdoor advertising shall be placed or maintained adjacent to any * * * interstate highway or primary highway in violation of the national

standards promulgated pursuant to subsections (c) and (f) of Section 131 of Title 23 of the United States Code, as such standards exist on the effective date of the amendment of this section at the 1967 Regular Session of the Legislature.

SEC. 25. Section 5288.5 of the Business and Professions Code is amended to read:

5288.5.

The director shall seek, and may enter into, agreements with the Secretary of * * * Transportation of the United States and shall take such steps as may be necessary from time to time, and may accept, any allotment of funds as provided by subdivision (j) of Section 131 of Title 23 of the United States Code, as amended from time to time, and such steps as may be necessary from time to time to obtain funds allotted pursuant to Section 131 for the purpose of paying the 75 percent federal share of the compensation required by subdivision (g) of Section 131 of Title 23 of the United States Code.

SEC. 26. Section 5288.5a is added to the Business and Professions Code, to read:

5288.5a.

If compensation is required by federal law, as described in the last paragraph of Section 5288.3a, no advertising display shall be required to be removed pursuant to Section 5288.2a unless and until federal funds for the federal share of compensation therefor, to-wit, 75 percent, required by subdivision (g) of

Section 131 of Title 23 of the United States Code have been appropriated by the federal government and made immediately available to the director and notification of such appropriation and immediate availability has been received by the director. This section shall not apply to the removal of any advertising display for which no federal share is payable.

SEC. 27. Section 5288.5b is added to the Business and Professions Code, to read:

5288.5b.

No advertising display shall be required to be removed pursuant to Section 5288.2a unless and until the expenditure for payments of just compensation therefor in the manner prescribed in Sections 5288.3a, 5288.3b, and 5288.3c has been hereafter authorized by statute, which statute shall designate the source of funds for such payments.

SEC. 28. Section 5288.5c is added to the Business and Professions Code, to read:

5288.5c.

(a) The director shall seek agreement with the Secretary of Transportation of the United States, or his successor, under provisions of Section 131 of Title 23 of the United States Code, to provide for effective control of outdoor advertising substantially as set forth herein, provided that such agreement can vary and change the definition of "unzoned commercial or industrial area" as set forth in Section 5213 and the definition of "business area" as set forth in Section 5214, or other sections related thereto, and provided further that if such agreement does vary from such sections it shall not be effective until the Legislature by

statute amends the sections to conform with the terms of the agreement. If agreement is reached on these terms, the director shall execute the agreement on behalf of the state.

(b) In the event an agreement cannot be achieved under subdivision (a), the director shall promptly institute proceedings of the kind provided for in subdivision (*l*) of Section 131 of Title 23 of the United States Code, in order to obtain a judicial determination as to whether this chapter and the regulations promulgated thereunder provide effective control of outdoor advertising as set forth therein. In such action the director shall request that the court declare rights, status, and other legal relations and declare whether the standards, criteria, and definitions contained in the agreement proposed by the director are consistent with customary use. If such agreement is held by the court in a final judgment to be invalid in whole or in part as inconsistent with customary use or as otherwise in conflict with Section 131 of Title 23 of the United States Code, the director shall promptly negotiate with the Secretary of Transportation, or his successor, a new agreement or agreements which shall conform to this chapter, as interpreted by the court in such action.

SEC. 28.5. Section 5288.7 is added to the Business and Professions Code, to read:

5288.7.

It is declared to be the intent of the Legislature in enacting the provisions of this chapter regulating advertising displays adjacent to highways included in the national system of interstate and defense highways or the federal-aid primary highway system to establish

minimum standards with respect thereto. The governing body of any city, county, or city and county may enact ordinances, including but not limited to land use or zoning ordinances, imposing restrictions on advertising displays adjacent to any street, road, or highway equal to or greater than those imposed by this chapter. The governing body of any city or city and county may enact ordinances requiring licenses or permits, or both, for the placing of advertising displays in view of any highway, including a highway included in the national system of interstate and defense highways or the federal-aid primary highway system, within its boundaries.

SEC. 29. Section 5311.5 is added to the Business and Professions Code, to read:

5311.5.

All advertising displays which were lawfully erected and which are maintained after January 1, 1968, in violation of Sections 5288 or 5288.1b of this chapter or the regulations of the director prescribed hereunder may be removed by the director upon 60 days' prior notice, by certified or registered mail, to the owner thereof. But no notice shall be required to be given to the owner of an advertising display whose name is not plainly displayed thereon. The 60 days shall be computed from the date of mailing.

SEC. 30. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 31. This act shall be known as the Collier-Z'berg Act of 1967.

Approved and filed Aug. 25, 1967.

PROOF OF SERVICE BY MAIL

1013 a, 2015.5 C. C. P.

RECEIVED
JUN 18 1968
OFFICE OF THE CLERK
SUPREME COURT, U.S.

STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO } ss

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of 18 years and not a party to the within above-entitled action; my business address is 430 Court Street, San Bernardino, California.

On the 14th day of June, 1968, I served the within

Motion to Dismiss

U.S. Supreme Court No. 1451

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States Post Office mail box at San Bernardino, California, addressed as follows:

J. Perry Langford
David K. Kroll
1401 U.S. National Bank Bldg.
San Diego, California 92101

Attorneys for Appellants
1 Copy

Mr. Dennis V. Wardle
County Clerk
County Courthouse
San Bernardino, California 92401
1 Copy

Court of Appeal
303 W. Third Street
San Bernardino, California 92401
3 Copies

United States Supreme Court
Washington, D.C. 20000
40 Copies

I certify or declare under the penalty of perjury that the foregoing is true and correct.

DATED: June 14, 1968

John F. Northland (signed)

No. [redacted]

In The Supreme Court of The United States

October Term, 1968

DESERT OUTDOOR
ADVERTISING, INC.,

Appellant,

vs.

COUNTY OF SAN BERNARDINO, et al.,

Appellees

On Appeal From the Court of Appeal of the State of California, Fourth Appellate District, Division Two

---

AFFIDAVIT OF DAVID K. KROLL
RE: LATE DOCKETING OF APPEAL

J. PERRY LANGFORD
DAVID K. KROLL
1401 U.S. National Bank Bldg.
San Diego, California 92101

Attorneys for Appellants.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. _____

DESERT OUTDOOR ADVERTISING, INC.,

Appellant,

vs.

COUNTY OF SAN BERNARDINO, et al.,

Appellees.

On Appeal From the Court of Appeal of the State of California, Fourth Appellate District, Division Two

---

AFFIDAVIT OF DAVID K. KROLL
RE: LATE DOCKETING OF APPEAL

I, David K. Kroll, being first duly sworn, hereby depose and say:

Since January, 1963, I am and have been an attorney at law licensed to practice before the courts of the State of California. I have further been admitted to practice before the Circuit Court of Appeals for the Ninth Circuit of the United States, and the District Court of the United States for the Southern District of California. In

association with J. Perry Langford, Esq., I am one of the attorneys for Appellant Desert Outdoor Advertising, Inc., herein.

In early February of 1968, I was retained by the Appellant to pursue and perfect an appeal to the Supreme Court of the United States in the within case. A petition for hearing had been denied by the California Supreme Court on January 3, 1968. At that time, and at the present time, I was and am inexperienced with practice before the United States Supreme Court. In early February, 1968, I consulted and did basic research in the San Diego County Law Library for the purpose of determining the applicable rules of Supreme Court practice and procedure. I thoroughly reviewed the book entitled SUPREME COURT PRACTICE, by Robert L. Stern and Eugene Gressman (BNA, Inc., 1962 ed.) and noted the Supreme Court Rules as set out in the appendix to that book. I further consulted the Supreme Court Rules volume of U.S.C.A., Title 28, with the specific purpose of determining if there had been any changes in the Rules since the printing of the Stern and Gressman book in 1962. At that time the 1966 Cumulative Annual Pocket Part was inserted in said volume, and it did not contain the rule changes enacted in April 1967. I noted that the changes made in the rules between 1962 and those contained in the 1966 Pocket Part did not affect the time for filing of the Notice of Appeal. I believed that sixty additional days were still provided for the filing of the Jurisdictional Statement after the initial ninety days from entry of final judgment. At that time I made photocopies of the pertinent Rules for my file, and future reference. Throughout my later research at the San Diego Law Library, and in all my communications with fellow members of the Bar, I did not learn that Rule 13 had been revised in April 1967 and that the additional sixty-day period had been cancelled. On March 29, 1968, within the original ninety-day period, I caused the Notice

of Appeal to be prepared and filed in the Court of Appeal herein. I then proceeded to prepare the Jurisdictional Statement in the belief that the last day to file the same would be May 27, 1968.

On the evening of May 10, 1968, in completing research for the Jurisdictional Statement, I had occasion to again consult the Rules volume of Title 28 U.S.C.A. On that occasion I found to my surprise and horror that the Rules had indeed been revised in April 1967, and that the Jurisdictional Statement could not be timely filed and that the time had passed in which to apply for an extension. On May 13, 1968, I telephoned the Clerk of the Supreme Court and learned that a late docketing could be accepted. I completed the Jurisdictional Statement on May 14, 1968, and delivered it to the printer on May 15, 1968. Docketing has been completed with no delay thereafter.

By reason of the above, the late docketing of the Appeal herein was caused entirely by mistake and inadvertence. I truly believed that I had consulted all applicable sources of Supreme Court Rules and that the latest rules provided for an additional sixty days, to May 27, 1968, in which to docket the record and file the Jurisdictional Statement.

WHEREFORE, I pray that the Supreme Court exercise its discretion and accept the late docketing of this appeal.

Respectfully submitted,

/s/ DAVID K. KROLL
Associate Counsel for Appellant.

POINTS AND AUTHORITIES

Pittsburgh Towing Co. v. Mississippi Valley Barge Line, 385 U.S. 32 (1966).



SUPREME COURT OF THE UNITED STATES

October Term, 1968.

DESERT OUTDOOR ADVERTISING, INC. *v.*
COUNTY OF SAN BERNARDINO.

APPEAL FROM THE COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT.

No. 114. Decided October 14, 1968.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question.